

Chapter 1

Introduction

1.1 On 6 December 2018, the Senate referred the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (the bill) and all circulated amendments to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 11 February 2019.¹

1.2 On 11 February 2019 the committee tabled a progress report seeking an extension of time to report until 12 February 2019.

Conduct of the inquiry

1.3 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 1092 organisations and individuals, as detailed at Appendix 1.

1.4 The committee also received over 9,000 items of correspondence, with each of these items based on one of 14 distinct form letters. All of these items of correspondence opposed the bill and expressed the need for greater protections for religious freedom. A list of the letters and the total number received for each is also available at Appendix 1. In addition, the committee received 45 items of correspondence, which although not directly addressing the bill, made general comments about religious freedom or raised other issues of concern.

1.5 The committee held two public hearings:

- 6 February 2019 in Brisbane; and
- 7 February 2019 in Sydney.

1.6 The witness lists for these hearings can be found at Appendix 2.

Compatibility with human rights

1.7 The statement of compatibility with human rights for the bill stated that it is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²

1.8 The statement noted:

1 *Journals of the Senate*, No. 137, 6 December 2018, pp. 4480–4482.

2 Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018, *Explanatory Memorandum*, p. 4.

The bill is compatible with human rights because it advances the protection of human rights, particularly the right to equality and non-discrimination. To the extent that it may limit rights, those limitations are reasonable, necessary and proportionate.³

Scrutiny of Bills Committee

1.9 The Senate Standing Committee for the Scrutiny of Bills considered the bill in its Scrutiny Digest 15 of 2018 and made no comment.⁴

Financial Impact

1.10 The explanatory memorandum for the bill stated that the bill will have no financial impact.⁵

Structure of the report

1.11 In November 2018, the Senate Legal and Constitutional Affairs References Committee conducted an inquiry into the legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff. The resulting report, tabled on 26 November 2018, contained an in-depth analysis of a number of relevant matters, including:

- the broader human rights and constitutional context in which the public discussion about discrimination by faith-based educational institutions has taken place;
- the use of the legislative exemptions in the *Sex Discrimination Act 1984* by faith-based educational institutions;
- arguments for and against removing the existing legislative exemptions;
- whether the application of the exemptions for students should differ from their application to teachers; and
- potential options for reform.⁶

3 Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018, *Explanatory Memorandum*, p. 5.

4 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 48.

5 Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018, *Explanatory Memorandum*, p. 1.

6 Senate Legal and Constitutional Affairs References Committee, *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff*, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Schooldiscrimination, November 2018.

1.12 Although some of these issues remain relevant to this legislation inquiry, this report does not propose to traverse the same ground as the references inquiry; rather, it will focus specifically on the bill and circulated amendments.

1.13 Chapter 2 contains a brief outline of the current legal framework, as well as an overview of the bill and all circulated amendments.

1.14 Chapter 3 explores the key issues about the bill and amendments raised in evidence. It then sets out the committee's views and recommendations.

Acknowledgment

1.15 The committee thanks those organisations and individuals that contributed to this inquiry by preparing written submissions and given evidence at the public hearings.

